



Indiana Department of Environmental Management

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Michael R. Pence
Governor

Carol S. Comer
Commissioner

November 14, 2016

Robert A. Kaplan
Acting Regional Administrator
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: State Implementation Plan Submittal for Indiana
Regarding 326 IAC 1-6, Startup, Shutdown, and
Malfunctions Rule; Request for Parallel Processing

Dear Mr. Kaplan:

Pursuant to Section 110 of the Clean Air Act and Title 13 of the Indiana Code, the Indiana Department of Environmental Management (IDEM) submits a request for parallel processing of an amendment to the Indiana state implementation plan. This amendment consists of revisions to 326 IAC 1-6 and 326 IAC 2-9-1 accomplished through one rulemaking. IDEM requests that the United States Environmental Protection Agency (U.S. EPA) approve 326 IAC 1-6-1, 326 IAC 1-6-2, 326 IAC 1-6-4, 326 IAC 1-6-5, and 326 IAC 1-6-6 into Indiana's state implementation plan. IDEM is not requesting any action be taken on 326 IAC 2-9-1.

This rule addresses deficiencies in Indiana's startup, shutdown, and malfunction provisions in response to the findings published by U.S. EPA in the Federal Register on June 12, 2015 (80 FR 33839). The revisions were adopted as a final rule by the Indiana Environmental Rules Board on November 9, 2016.

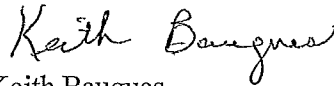
This submittal consists of one (1) hard copy of the required documentation. An electronic version of the submittal in PDF format that is identical to the hard copy has been sent to Chris Panos at the U.S. EPA Region 5 office. In order to assist with your review of this state implementation plan submission, a list of supporting documents is attached.

The rulemaking documentation is being forwarded to U.S. EPA with a request for parallel processing while the rule is being reviewed by the Indiana Attorney General, presented to the Governor for signature and filed with the Legislative Services Agency. When the state rule, LSA #15-326, prints as final in the Indiana Register, this state implementation plan submittal will be supplemented with an addendum that includes the final rule as published, the signature page complete with all signatures, and the transcript of the final adoption hearing.

Throughout the development of these amendments, staff of the Office of Legal Counsel and the Office of Air Quality worked closely with your staff to ensure that any potential problems that might exist with this requested state implementation plan revision would be resolved. I request that

U.S. EPA approve these modifications of Indiana's state implementation plan. If you have any questions regarding this submittal, please contact Christine Pedersen, Rule Development Section Chief, Office of Legal Counsel at (317) 233-5684.

Sincerely,



Keith Baugues
Assistant Commissioner
Office of Air Quality

KB/cep

Attachments: Supporting Documents

cc: John Mooney, U.S. EPA Region 5 (no enclosures)
Doug Aburano, U.S. EPA Region 5 (no enclosures)
Pamela Blakley, U.S. EPA Region 5 (no enclosures)
Steve Rosenthal, U.S. EPA Region 5 (no enclosures)
Christine Pedersen, IDEM (no enclosures)
Jack Harmon, IDEM (no enclosures)
SIP file

Supporting Documents

Attachment A: Administrative Checklist (40 CFR 51, Appendix V)

Attachment B: Final Rule. LSA Document #15-326(F) as final adopted by the Environmental Rules Board on November 9, 2016
(To be submitted when published in the Indiana Register. Draft version included with this submittal)

Attachment C: Signature Page signed by the Chair of the Environmental Rules Board
(To be submitted with final rule)

Attachment D: Second Notice, including the Notice of Public Hearing, as published in the Indiana Register on March 30, 2016 (DIN: 20160330-IR-326150326SNA)

Attachment E: Certificates of Web Publication

Attachment F: Transcript of First Public Hearing, including Exhibits, held on August 10, 2016

Attachment G: Proposed Rule, including the Notice of Public Hearing, as published in the Indiana Register on August 31, 2016 (DIN: 20160831-IR-326150326PRA)

Attachment H: Transcript of Second Public Hearing, including Exhibits, held on November 9, 2016
(To be submitted with final rule)

Attachment A

ADMINISTRATIVE CHECKLIST (40 CFR 51, Appendix V)

- | | |
|---|---|
| 1. The submittal is accompanied by a formal letter of submittal from the governor or his designee. | Enclosed |
| 2. Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement ("document"); in final form. | Attachment C |
| a. Date of adoption or final issuance: | November 9, 2016 (adoption) |
| b. The effective date of the plan, if different from the adoption/issuance date. | 30 days after filing (to be determined) |
| 3. Evidence that the State has the necessary legal authority under state law to adopt and implement the plan. | IC 13-14-8 |
| 4. A copy of the actual regulation or document submitted for approval and incorporation by reference into the plan, including the following: | Attachment B |
| a. Indication of the changes made to the existing approved plan, where applicable. | |
| b. The submittal shall be a copy of the official State regulation or document signed, stamped, dated by the appropriate state official indicating that it is fully enforceable by the State. Effective date shall be stated in the document itself. | |
| 5. Evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan. | Attachment C |
| 6. Evidence that public notice was given, including date of proof of publication. | Attachments D, E, and G |
| <input checked="" type="checkbox"/> Notice of First Public Hearing and Certificates of Web Publication | |
| <input checked="" type="checkbox"/> Notice of Second Public Hearing and Certificates of Web Publication | |
| 7. Certification that public hearings were held in accordance with information provided in public hearing notice. | Attachments F and H |
| <input checked="" type="checkbox"/> Transcript from First Public Hearing | |
| <input checked="" type="checkbox"/> Transcript from Second Public Hearing | |
| 8. Compilation of public comments and State's response. | Attachments D, F, G and H |
| <input checked="" type="checkbox"/> Second Notice | |
| <input checked="" type="checkbox"/> Proposed Rule | |

Attachment B

TITLE 326 AIR POLLUTION CONTROL DIVISION

Final Rule

LSA Document #15-326(F)

DIGEST

Amends 326 IAC 1-6-1, 326 IAC 1-6-2, 326 IAC 1-6-4, 326 IAC 1-6-5, 326 IAC 1-6-6, and 326 IAC 2-9-1 concerning startup, shutdown, and malfunction (SSM) emissions. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: September 30, 2015, Indiana Register (DIN: 20150930-IR-326150326FNA).

Second Notice of Comment Period: March 30, 2016, Indiana Register (DIN: 20160330-IR-326150326SNA).

Notice of First Hearing: March 30, 2016, Indiana Register (DIN: 20160330-IR-326150326PHA).

Date of First Hearing: August 10, 2016.

Proposed Rule: August 31, 2016, Indiana Register (DIN: 20160831-IR-326150326PRA).

Notice of Second Hearing: August 31, 2016, Indiana Register (DIN: 20160831-IR-326150326PHA).

Date of Second Hearing: November 9, 2016.

326 IAC 1-6-1; 326 IAC 1-6-2; 326 IAC 1-6-4; 326 IAC 1-6-5; 326 IAC 1-6-6; 326 IAC 2-9-1.

SECTION 1. 326 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to the owner or operator of any ~~facility~~ **source** required to obtain a permit under 326 IAC 2-5.1 or 326 IAC 2-6.1. (*Air Pollution Control Division; 326 IAC 1-6-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; filed May 25, 1994, 11:00 a.m.: 17 IR 2238; filed Nov 25, 1998, 12:13 p.m.: 22 IR 980*)

SECTION 2. 326 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-2 Records; notice of malfunction

Authority: IC 13-14-8-2; IC 13-17-3-4

Affected: IC 13-15; IC 13-17

Sec. 2. (a) **The owner or operator must keep** a record ~~shall be kept~~ of all malfunctions, including startups, or shutdowns of any facility **emission unit** or emission control equipment ~~which result that results~~ in violations of:

- (1) applicable air pollution control regulations; or
- (2) applicable emission limitations. ~~and such.~~

(b) **The records shall-must** be retained for a period of three (3) years and ~~shall~~ be made available to the commissioner upon request.

(c) When a malfunction **under subsection (a)** of any facility **emission unit** or emission control equipment occurs ~~which that~~ lasts more than one (1) hour, ~~said the~~ condition **shall must** be reported to the commissioner or ~~his the~~ **commissioner's** appointed representative **as follows:**

(1) Notification ~~shall must~~ be made by telephone or telegraph, **other electronic means** as soon as practicable, but in no event later than four (4) daytime business hours after the beginning of ~~said the~~ occurrence.

(2) Failure to report a malfunction of any **emission unit** or emission control equipment subject to the requirements of this rule (~~326 IAC 1-6~~) shall constitute a violation of this rule (~~326 IAC 1-6~~) and any other applicable rules.

(3) Information ~~of on~~ the scope and expected duration of the malfunction ~~shall-must~~ be provided including the following:

(1)(A) Identification of the specific emission control device to be taken out of service, as well as **and** the location and permit number of ~~such-the~~ equipment.

(2)(B) The expected length of time that the emission control equipment will be out of service.

(3)(C) The nature and quantity of emissions of air contaminants likely to occur during the shutdown period.

(4)(D) Any measures such as the use of off-shift labor on equipment that will be ~~utilized-used~~ to minimize the length of the shutdown period, **such as the use of off-shift labor on equipment.**

(5) ~~Any reasons that shutdown of the facility operation during the maintenance period would be impossible for the following reason:~~

(A) ~~continued operation is required to provide essential services, provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be sufficient reason;~~

(B) ~~continued operation is necessary to prevent injury to persons or severe damage to equipment.~~

(6)(E) A demonstration that interim control measures have reduced or will reduce emissions from the facility **emission unit** during the shutdown period.

(Air Pollution Control Division; 326 IAC 1-6-2; filed Mar 10, 1988, 1:20 pm: 11 IR 2380; errata, 11 IR 2632)

SECTION 3. 326 IAC 1-6-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-4 **Operating** conditions

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 4. (a) Facility ~~Source~~ owners or operators shall ~~be responsible for operating~~ **operate** and ~~maintaining~~ **maintain** all emission control equipment and combustion or process equipment or processes in compliance with all applicable rules. ~~Emissions temporarily exceeding the standards which are due to malfunctions of facilities or emission control equipment shall not be considered a violation of the rules provided the source demonstrates that:~~

~~(1) All reasonable measures were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the allowable limits, including the use of off-shift and over-time labor, if necessary.~~

~~(2) All possible steps were taken to minimize the impact of the excessive emissions on ambient air quality which may include but not be limited to curtailment of operation and/or shutdown of the facility.~~

~~(3) Malfunctions have not exceeded five percent (5%), as a guideline, of the normal operational time of the facility.~~

~~(4) The malfunction is not due to the negligence of the operator.~~

(b) ~~No facility shall~~ **An emission unit must not** be operated unless the **any required** air pollution control **device or** devices and measures are also in operation simultaneously and are not bypassed., ~~unless necessary to prevent damage to equipment or injury to persons or unless there is a malfunction and the requirements set forth in subsection (a) of this section are met.~~

(c) ~~Excessive emissions shall must be brought~~ **Source owners or operators must bring emissions in excess of applicable limits** into compliance with all practicable speed, and **take** appropriate action **actions**, ~~including those set forth above, actions must be taken~~ to:

~~(1) correct the conditions causing such the emissions to exceed applicable limits; to~~

~~(2) reduce the frequency of occurrence of such the conditions; to~~

~~(3) minimize the amount by which said the limits are exceeded; and to~~

~~(4) reduce the length of time for which said the limits are exceeded.~~

These actions shall ~~must~~ be initiated as expeditiously as practicable. (*Air Pollution Control Division; 326 IAC 1-6-4; filed Mar 10, 1988, 1:20 pm: 11 IR 2381*)

SECTION 4. 326 IAC 1-6-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-5 Excessive malfunctions; department actions

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 5. The commissioner may consider the following guidance in determining cases of excessive malfunctions: ~~where~~

(1) If records show that repeated malfunctions exceed five percent (5%) as a ~~guideline~~, of the normal operational time for any one (1) control device or combustion or process equipment, the commissioner may require that the maintenance program be improved or that the defective or faulty equipment or emission control device be replaced.

(2) The commissioner may require curtailment of operation of a ~~facility or~~ **emission unit** if the owner or operator of the ~~facility or~~ **emission unit** and emission control device cannot demonstrate that for the most recent twelve (12) month period the ~~facility and/or~~ **emission unit** and the emission control device ~~has have~~ operated in compliance with the applicable rules at least ninety-five percent (95%) of the operating time of ~~said the~~ equipment.

(Air Pollution Control Division; 326 IAC 1-6-5; filed Mar 10, 1988, 1:20 pm: 11 IR 2381)

SECTION 5. 326 IAC 1-6-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-6 Malfunction emission reduction program

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 6. (a) Any owner or operator of a ~~facility which has the potential to emit concentration in excess of the concentrations stated in 326 IAC 1-6-1~~ **an emission unit that is required to obtain a permit under section 1 of this rule** shall submit ~~by January 19, 1980, or a malfunction emission reduction program~~ within one hundred eighty (180) days after a new ~~source~~ **emission unit** commences operation. ~~a malfunction emission reduction program. Said~~

(b) ~~The program shall~~ **must** include: ~~but not be limited to~~

(1) the normal operating emission rate; and

(2) ~~the program proposed actions that will be taken~~ to reduce emissions in the event of a malfunction to an emission rate ~~which~~ **that** will not contribute to the cause of the violation of the ambient air quality standards established in 326 IAC 1-3.

(c) The program ~~shall~~ **must** be based on the:

(1) best estimates of type and number of startups, shutdowns, and malfunctions experienced during normal operation of the ~~facility~~ **emission unit** or emission control device; and ~~the~~

(2) scope and duration of ~~such~~ **the** conditions. ~~Said~~

(d) ~~The program may be~~ **is** subject to review and approval by the commissioner. *(Air Pollution Control Division; 326 IAC 1-6-6; filed Mar 10, 1988, 1:20 pm: 11 IR 2382)*

SECTION 6. 326 IAC 2-9-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-9-1 General provisions

Authority: IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-14-8

Sec. 1. (a) The definitions in IC 13-11-2, 326 IAC 1-2, 326 IAC 2-7, and 326 IAC 2-8 apply throughout this rule.

(b) A source may limit its potential to emit by complying with the specific restrictions and conditions listed in this rule. A source electing to comply with this rule shall apply to the commissioner for a source specific operating agreement. A source issued a source specific operating agreement under this rule is not subject to 326 IAC 2-6.1 unless otherwise required by state, federal, or local law. A source issued a source specific operating agreement pursuant to this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the source specific operating agreement limits the source's potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7. Until the commissioner has issued an operating agreement for a source that would otherwise be subject to 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, the source is subject to all applicable requirements of those rules. A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(c) The owner or operator of a source seeking an operating agreement ~~shall~~ **must** submit a request to the commissioner. The request ~~shall~~ **must** include all information necessary for the commissioner to verify that the source meets the applicable restrictions and conditions specified in this rule, including the following:

(1) Identifying information.

(2) A description of the following:

(A) The source's:

(i) nature;

(ii) location;

(iii) design capacity; and

(iv) typical operating schedule.

(B) The nature and amount of regulated pollutants emitted in the prior twelve (12) months.

(C) How the source will comply with the applicable restrictions and conditions specified in this rule.

(3) Certification by a responsible official that the source shall comply with all applicable conditions of this rule.

The request ~~shall~~ **must** be signed by a responsible official who ~~shall certify~~ **certifies** that the information contained therein is accurate, true, and complete. Any applicable fees specified in this rule ~~shall~~ **must** be submitted with the request.

(d) If the commissioner determines that the source meets the applicable restrictions and conditions specified in any applicable section of this rule, the commissioner shall issue the operating agreement. The operating agreement ~~shall~~ **must**:

- (1) specify the source specific restrictions and conditions applicable to the source; and
- (2) establish specific monitoring and reporting requirements.

Any source for which the commissioner has issued a source specific operating agreement shall provide annual notice to the commissioner stating that the source is in operation and certifying that its operations are in compliance with applicable sections as specified in the operating agreement. This notice ~~shall~~**must** be submitted no later than January 30 of each year.

(e) Before a source subject to this section modifies its operations in ~~such~~ a way that it will no longer comply with the applicable restrictions and conditions of its source specific operating agreement, it shall obtain the appropriate approval from the commissioner under the following:

- (1) 326 IAC 2-2.
- (2) 326 IAC 2-3.
- (3) 326 IAC 2-4.1.
- (4) 326 IAC 2-5.1.
- (5) 326 IAC 2-6.1.
- (6) 326 IAC 2-7.
- (7) 326 IAC 2-8.

(f) Any records required to be kept by a source in accordance with any section of this rule ~~shall~~**must** be:

- (1) maintained at the site for at least five (5) years; and
- (2) made available for inspection by the department upon request.

(g) A source may apply for up to four (4) different types of source specific operating agreements contained in this rule provided allowable emissions or potential to emit for any regulated air pollutant, as limited under the source specific operating agreements, do not exceed major source levels when aggregated. A source may combine up to four (4) types of source specific operating agreements in one (1) application. Upon billing, the applicant shall pay the applicable fee in accordance with 326 IAC 2-1.1-7(g).

(h) Any source subject to this rule shall report to the department, in writing, any exceedance of a requirement contained in this rule or its operating agreement within one (1) week of its occurrence. The exceedance report ~~shall~~**must** include information on the actions taken to correct the exceedance, including measures to reduce emissions, in order to comply with the established limits. ~~If an exceedance is the result of a malfunction, then the provisions of 326 IAC 1-6 apply.~~

(i) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided.

(j) Revocation of the operating agreement and a source becoming subject to the applicable requirements of a major source may result from noncompliance with any:

- (1) applicable provision of this rule; or

(2) requirement contained in a source's operating agreement.
(*Air Pollution Control Division; 326 IAC 2-9-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2280; filed Apr 1, 1996, 9:00 a.m.: 19 IR 1757; filed May 7, 1997, 4:00 p.m.: 20 IR 2303; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1059; errata filed May 12, 1999, 11:23a.m.: 22 IR 3108; readopted filed Oct 22, 2004, 10:35 a.m.: 28 IR 801; filed Sep 28, 2011, 10:56 a.m.: 20111026-IR-326070286FRA*)

Attachment C

LSA Document # 15-326

Rule Signature Page (Attachment C)
to be submitted with the Final Rule

Attachment D

Notice of Public Hearing

LSA Document #15-326

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 10, 2016, at 1:30 p.m., at the Indiana Government Center South, 302 West Washington Street, Conference Center Room 22, Indianapolis, Indiana, the Environmental Rules Board will hold a public hearing on amendments to 326 IAC 1-6 concerning amendments to the startup, shutdown, and malfunction (SSM) rule, in response to a U.S. Environmental Protection Agency (EPA) SIP Call.

The purpose of this hearing is to receive comments from the public prior to consideration of preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Jack Harmon, Rules Development Branch, Office of Legal Counsel, (317) 234-9535 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

Indiana Government Center North

100 North Senate Avenue

Indianapolis, IN 46204-2251

or call (317) 233-1785 (V). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service (711) or (800) 743-3333. Please provide a minimum of 72 hours notification.

Copies of these rules are now on file at the Rules Development Branch, Office of Legal Counsel, Indiana Department of Environmental Management, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor and Legislative Services Agency, Indiana Government Center North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana and are open for public inspection.

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

Posted: 03/30/2016 by Legislative Services Agency
An [html](#) version of this document.

TITLE 326 AIR POLLUTION CONTROL DIVISION

SECOND NOTICE OF COMMENT PERIOD

LSA Document #15-326

STARTUP, SHUTDOWN, AND MALFUNCTION (SSM) EMISSIONS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at 326 IAC 1-6 and 326 IAC 2-9-1(h) concerning the treatment of excess emissions at certain industrial facilities during periods of startup, shutdown, or malfunction (SSM). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: September 30, 2015, Indiana Register (DIN: 20150930-IR-326150326FNA).

CITATIONS AFFECTED: 326 IAC 1-6-1; 326 IAC 1-6-2; 326 IAC 1-6-4; 326 IAC 1-6-5; 326 IAC 1-6-6; 326 IAC 2-9-1.

AUTHORITY: IC 13-14-8; IC 13-17-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The United States Environmental Protection Agency (U.S. EPA) published findings in the Federal Register (FR) on June 12, 2015 (80 FR 33839) concerning inadequacies to startup, shutdown, and malfunction (SSM) provisions in state rules. This action, effective on May 22, 2015, directs thirty-six (36) states, including Indiana, to correct specific provisions in State Implementation Plans (SIPs) concerning the treatment of excess emissions that occur at certain industrial facilities during periods of SSM to be consistent with the Clean Air Act (CAA) and with U.S. EPA's updated SSM policy. Section 302(k) of the CAA requires SIPs to contain emission limitations that "limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis." However, the conditions listed in 326 IAC 1-6-4(a) would allow an exemption for noncompliance with emission limitations during certain malfunction events. Owners and operators of facilities that are required to obtain a permit under 326 IAC 2-5.1 or 326 IAC 2-6.1, generally those sources requiring a construction permit after December 25, 1998, except for exemptions as listed in the rule, will be affected by this rulemaking. States are required to submit a revision of the inadequate SSM provisions for approval into the SIP by November 22, 2016.

IDEM is proposing to amend state rules to address SSM deficiencies. The preventive maintenance plan provision at 326 IAC 1-6-3 will not be affected by this rulemaking because it does not pertain to a malfunction. Therefore, it is not included in this rulemaking. The language at 326 IAC 2-9-1(h) will be changed because it references 326 IAC 1-6 in its requirements and states that if exceedances are due to a malfunction, then the provisions of 326 IAC 1-6 shall apply.

IDEM seeks comment on the affected citations listed, including suggestions for specific rule language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

There is no fiscal impact on affected sources of the draft rule amendments for this rulemaking.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Jack Harmon, Rules Development Branch, Office of Legal Counsel at (317) 234-9535 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 30, 2015, through October 30, 2015, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Indiana Energy Association (IEA)

Indiana Chamber of Commerce (IN Chamber)

Indiana Manufacturers Association (IMA)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Generally, the provisions of 326 IAC 1-6-4(a) and the relevant provisions of 326 IAC 2-9-1(h) do not apply to the large electric generating facilities represented by Indiana Energy Association (IEA) because these facilities are regulated and permitted under the provisions of Title V that supersede 326 IAC 1-6-4(a). The U.S. EPA's revised policy on SSM is overreaching and does not provide appropriate flexibility for states in their primary role to regulate sources to assure attainment of air quality standards. Finally, U.S. EPA's recent policy change in this matter may require IDEM to address other provisions of the Indiana SIP in the future; therefore, it is important that the issues be addressed effectively at this time.

IDEM should work with affected industrial stakeholders to retain and revise the rule to incorporate as much flexibility as possible to assure sources having proper emission controls are not subject to rigid and inappropriate enforcement against unavoidable malfunctions. At a minimum, IDEM should retain provisions which define how a source's operation will be evaluated to demonstrate that the source has taken reasonable actions to prevent and mitigate malfunctions. IDEM should consider how an affirmative defense may be allowed as part of the state's enforcement authority based on Clean Air Act provisions and certain legal precedents. (IEA)

We support common sense environmental regulations that recognize that excess emissions from startup, shutdown and malfunction (SSM) events are often unavoidable. Startup and shutdown activities are transition periods that are usually minimized and are not reflective of a normal operation of the source. Malfunction periods, despite preventive measures regularly taken, are inherently unpredictable, and, therefore, sources should be protected from frivolous allegations of non-compliance based on these transitional periods of startup and shutdown. (IN Chamber) (IMA)

Response: IDEM appreciates the participation in this rulemaking by providing comments. IDEM agrees that this rulemaking is generally not relevant to the facilities represented within this comment. The U.S. EPA's mandate was specific because the current rule violates the Clean Air Act (CAA), and could jeopardize Indiana's approval to implement its permitting program; therefore, IDEM must address this SIP call. IDEM has drafted a rule change to address the U.S. EPA's concerns, but does not plan to form a work group at this time because the flexibility requested in the comment conflicts with the federal requirements to remove the provision. IDEM cannot control U.S. EPA's possible future policies or rulemaking processes, but will work with all stakeholders on future rulemakings where there is flexibility to the state in developing new or amended rules.

Comment: There should be a basis for mitigating factors for periods of malfunction, and affirmative defense for periods of SSM events. Based on NRDC vs EPA, and Luminant Generation Co. vs EPA, IDEM has the authority to retain provisions in the Indiana rules that provides the option to establish mitigating factors or affirmative defense for SSM events. Therefore, IDEM should convene a formal work group with stakeholders to develop amendments to the rules. (IN Chamber) (IMA)

Response: In proposing and issuing the SSM SIP call, U.S. EPA acknowledged that NRDC vs EPA, Luminant Generation Co. vs EPA, and several other cases either upheld or did not question U.S. EPA's authority to approve SIP provisions providing an affirmative defense for unplanned SSM events. (See 79 FR 55920, Sep. 17, 2014; and 80 FR 33840, Jun. 12, 2015). In the SSM SIP call, U.S. EPA expressly "revised its prior interpretation" of affirmative defenses for unplanned SSM events (80 FR 33845). The legality of U.S. EPA's revised interpretation is currently under review by the D.C. Circuit Court of Appeals in a consolidated case involving several state and industry parties. (Florida v. EPA, Case No. 15-1267; D.C. Cir. Aug. 11, 2015). Because the D.C. Circuit Court of Appeals has not stayed the SSM SIP call during the pendency of the case, IDEM must address the SSM SIP call within the required timeframes. U.S. EPA's revised interpretation in the SSM SIP call does not allow IDEM to retain affirmative defenses for SSM events. Should the resolution of the court case affect this interpretation, IDEM will revisit the requirements at that time.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #15-326 Startup, Shutdown, and Malfunction (SSM) Emissions
Jack Harmon
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to jaharmon@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments**

will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than April 29, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Jack Harmon, Rules Development Branch, Office of Legal Counsel, (317) 234-9535 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to the owner or operator of any ~~facility~~ **source** required to obtain a permit under 326 IAC 2-5.1 or 326 IAC 2-6.1.

(Air Pollution Control Division; 326 IAC 1-6-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; filed May 25, 1994, 11:00 a.m.: 17 IR 2238; filed Nov 25, 1998, 12:13 p.m.: 22 IR 980)

SECTION 2. 326 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-2 Records; notice of malfunction

Authority: IC 13-17-3-4; IC 13-14-8-2

Affected: IC 13-15; IC 13-17

Sec. 2. (a) **The owner or operator must keep** a record ~~shall be kept~~ of all malfunctions, ~~including startups, or shutdowns of any facility emission unit or emission control equipment which that~~ result in violations of:

- (1) applicable air pollution control regulations; or
- (2) applicable emission limitations. ~~and such.~~

(b) ~~The records shall~~ **must** be retained for a period of three (3) years and ~~shall~~ be made available to the commissioner upon request.

(c) When a malfunction of any ~~facility~~ **emission unit** or emission control equipment occurs ~~which that~~ lasts more than one (1) hour, ~~said the condition shall~~ **must** be reported to the commissioner or ~~his the~~ **commissioner's** appointed representative **as follows:**

(1) Notification ~~shall~~ **must** be made by telephone or telegraph, **other electronic means** as soon as practicable, but in no event later than four (4) daytime business hours after the beginning of ~~said the~~ occurrence.

(2) Failure to report a malfunction of any **emission unit** or emission control equipment subject to the requirements of this rule (~~326 IAC 1-6~~) shall constitute a violation of this rule (~~326 IAC 1-6~~) and any other applicable rules.

(3) Information of the scope and expected duration of the malfunction ~~shall~~ **must** be provided including the following:

- (4) (A) Identification of the specific emission control device to be taken out of service, ~~as well as and~~ the location and permit number of ~~such the~~ equipment.
- (2) (B) The expected length of time that the emission control equipment will be out of service.
- (3) (C) The nature and quantity of emissions of air contaminants likely to occur during the shutdown period.
- (4) (D) Any measures ~~such as the use of off-shift labor on equipment~~ that will be ~~utilized~~ **used** to minimize the length of the shutdown period, **such as the use of off-shift labor on equipment.**

(5) Any reasons that shutdown of the facility operation during the maintenance period would be impossible for the following reason:

- (A) continued operation is required to provide essential services, provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be sufficient reason;
- (B) continued operation is necessary to prevent injury to persons or severe damage to equipment;
- (6) (E) A demonstration that interim control measures have reduced or will reduce emissions from the facility emission unit during the shutdown period.

(Air Pollution Control Division; 326 IAC 1-6-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; errata, 11 IR 2632)

SECTION 3. 326 IAC 1-6-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-4 Operating conditions

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 4. (a) Facility ~~Source~~ owners or operators shall be responsible for operating ~~operate~~ and maintaining ~~maintain~~ all emission control equipment and combustion or process equipment or processes in compliance with all applicable rules. Emissions temporarily exceeding the standards which are due to malfunctions of facilities or emission control equipment shall not be considered a violation of the rules provided the source demonstrates that:

- (1) All reasonable measures were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the allowable limits, including the use of off-shift and over-time labor, if necessary;
- (2) All possible steps were taken to minimize the impact of the excessive emissions on ambient air quality which may include but not be limited to curtailment of operation and/or shutdown of the facility;
- (3) Malfunctions have not exceeded five percent (5%), as a guideline, of the normal operational time of the facility;
- (4) The malfunction is not due to the negligence of the operator.

(b) No facility shall ~~An emission unit must not~~ be operated unless the air pollution control ~~device or devices~~ and measures are also in operation simultaneously and are not bypassed. ~~unless necessary to prevent damage to equipment or injury to persons or unless there is a malfunction and the requirements set forth in subsection (a) of this section are met.~~

(c) Excessive emissions ~~shall~~ **must** be brought into compliance with all practicable speed, and appropriate action, including those set forth above, ~~actions must be taken to:~~

- (1) correct the conditions causing ~~such the~~ emissions to exceed applicable limits; ~~to~~
- (2) reduce the frequency of occurrence of ~~such the~~ conditions; ~~to~~
- (3) minimize the amount by which ~~said the~~ limits are exceeded; and ~~to~~
- (4) reduce the length of time for which ~~said the~~ limits are exceeded.

These actions ~~shall~~ **must** be initiated as expeditiously as practicable.

(Air Pollution Control Division; 326 IAC 1-6-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)

SECTION 4. 326 IAC 1-6-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-5 Excessive malfunctions; department actions

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 5. The commissioner may consider the following guidance in determining cases of excessive malfunctions: ~~where~~

- (1) If records show that repeated malfunctions exceed five percent (5%) ~~as a guideline~~, of the normal operational time for any one (1) control device or combustion or process equipment, the commissioner may require that the maintenance program be improved or that the defective or faulty equipment or emission control device be replaced.
- (2) The commissioner may require curtailment of operation of ~~a facility~~ **an emission unit** if the owner or operator of the ~~facility or emission unit~~ and emission control device cannot demonstrate that for the most recent twelve (12) month period the ~~facility and/or emission unit and the emission control device has have~~

operated in compliance with the applicable rules at least ninety-five percent (95%) of the operating time of said the equipment.

(Air Pollution Control Division; 326 IAC 1-6-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)

SECTION 5. 326 IAC 1-6-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-6 Malfunction emission reduction program

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 6. (a) Any owner or operator of a facility which has the potential to emit concentration in excess of the concentrations stated in an emission unit that is required to obtain a permit under 326 IAC 1-6-1 shall submit by January 19, 1980, or a malfunction emission reduction program within one hundred eighty (180) days after a new source emission unit commences operation. a malfunction emission reduction program. Said

(b) The program shall must include: but not be limited to

(1) the normal operating emission rate; and

(2) the program proposed actions that will be taken to reduce emissions in the event of a malfunction to an emission rate which that will not contribute to the cause of the violation of the ambient air quality standards established in 326 IAC 1-3.

(c) The program shall must be based on the:

(1) best estimates of type and number of startups, shutdowns, and malfunctions experienced during normal operation of the facility emission unit or emission control device; and the

(2) scope and duration of such the conditions. Said

(d) The program may be is subject to review and approval by the commissioner.

(Air Pollution Control Division; 326 IAC 1-6-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2382)

SECTION 6. 326 IAC 2-9-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-9-1 General provisions

Authority: IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-11-2; IC 13-14-8

Sec. 1. (a) The definitions in IC 13-11-2, 326 IAC 1-2, 326 IAC 2-7, and 326 IAC 2-8 apply throughout this rule.

(b) A source may limit its potential to emit by complying with the specific restrictions and conditions listed in this rule. A source electing to comply with this rule shall apply to the commissioner for a source specific operating agreement. A source issued a source specific operating agreement under this rule is not subject to 326 IAC 2-6.1 unless otherwise required by state, federal, or local law. A source issued a source specific operating agreement pursuant to this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the source specific operating agreement limits the source's potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7. Until the commissioner has issued an operating agreement for a source that would otherwise be subject to 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, the source is subject to all applicable requirements of those rules. A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(c) The owner or operator of a source seeking an operating agreement shall must submit a request to the commissioner. The request shall must include all information necessary for the commissioner to verify that the source meets the applicable restrictions and conditions specified in this rule, including the following:

(1) Identifying information.

(2) A description of the following:

(A) The source's:

- (i) nature;
- (ii) location;
- (iii) design capacity; and
- (iv) typical operating schedule.

(B) The nature and amount of regulated pollutants emitted in the prior twelve (12) months.

(C) How the source will comply with the applicable restrictions and conditions specified in this rule.

(3) Certification by a responsible official that the source shall comply with all applicable conditions of this rule.

The request ~~shall~~ **must** be signed by a responsible official who ~~shall certify~~ **certifies** that the information contained therein is accurate, true, and complete. Any applicable fees specified in this rule ~~shall~~ **must** be submitted with the request.

(d) If the commissioner determines that the source meets the applicable restrictions and conditions specified in any applicable section of this rule, the commissioner shall issue the operating agreement. The operating agreement ~~shall~~ **must**:

- (1) specify the source specific restrictions and conditions applicable to the source; and
- (2) establish specific monitoring and reporting requirements.

Any source for which the commissioner has issued a source specific operating agreement shall provide annual notice to the commissioner stating that the source is in operation and certifying that its operations are in compliance with applicable sections as specified in the operating agreement. This notice ~~shall~~ **must** be submitted no later than January 30 of each year.

(e) Before a source subject to this section modifies its operations in such a way that it will no longer comply with the applicable restrictions and conditions of its source specific operating agreement, it shall obtain the appropriate approval from the commissioner under the following:

- (1) 326 IAC 2-2.
- (2) 326 IAC 2-3.
- (3) 326 IAC 2-4.1.
- (4) 326 IAC 2-5.1.
- (5) 326 IAC 2-6.1.
- (6) 326 IAC 2-7.
- (7) 326 IAC 2-8.

(f) Any records required to be kept by a source in accordance with any section of this rule ~~shall~~ **must** be:

- (1) maintained at the site for at least five (5) years; and
- (2) made available for inspection by the department upon request.

(g) A source may apply for up to four (4) different types of source specific operating agreements contained in this rule provided allowable emissions or potential to emit for any regulated air pollutant, as limited under the source specific operating agreements, do not exceed major source levels when aggregated. A source may combine up to four (4) types of source specific operating agreements in one (1) application. Upon billing, the applicant shall pay the applicable fee in accordance with 326 IAC 2-1.1-7(g).

(h) Any source subject to this rule shall report to the department, in writing, any exceedance of a requirement contained in this rule or its operating agreement within one (1) week of its occurrence. The exceedance report ~~shall~~ **must** include information on the actions taken to correct the exceedance, including measures to reduce emissions, in order to comply with the established limits. ~~If an exceedance is the result of a malfunction, then the provisions of 326 IAC 1-6 apply.~~

(i) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided.

(j) Revocation of the operating agreement and a source becoming subject to the applicable requirements of a major source may result from noncompliance with any:

- (1) applicable provision of this rule; or
- (2) requirement contained in a source's operating agreement.

(Air Pollution Control Division; 326 IAC 2-9-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2280; filed Apr 1, 1996, 9:00 a.m.: 19 IR 1757; filed May 7, 1997, 4:00 p.m.: 20 IR 2303; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1059; errata filed

Indiana Register

May 12, 1999, 11:23 a.m.: 22 IR 3108; readopted filed Oct 22, 2004, 10:35 a.m.: 28 IR 801; filed Sep 28, 2011, 10:56 a.m.: 20111026-IR-326070286FRA)

Notice of Public Hearing

Posted: 03/30/2016 by Legislative Services Agency

An html version of this document.

Attachment E

Legal Notice of Public Hearing

Under 40 CFR 51.102, notice is hereby given that the Environmental Rules Board (board) will hold a public hearing at its regularly scheduled meeting on Wednesday, August 10, 2016, for the air program rules listed in this notice. The meeting will convene at 1:30 p.m. at the Indiana Government Center-South, Conference Center Room 22, 302 West Washington Street, Indianapolis, Indiana. The purpose of the hearings is to receive public comments prior to board actions. All interested persons are invited and will be given a reasonable opportunity to express their views concerning the proposed actions.

Board documents may be viewed and downloaded from the Indiana Department of Environmental Management's Web site as early as one week prior to the meeting at <http://www.in.gov/idem/4696.htm>.

Copies of the proposed air program rules are also available to any person upon request, may be viewed online via the Internet from local libraries, and are available for public inspection at the following locations:

Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center-North, 100 North Senate Avenue, 13th Floor, Indianapolis, Indiana 46204.

Indiana Department of Environmental Management, Northwest Office, 330 West US Highway 30, Suite F, Valparaiso, IN 46385.

Indiana Department of Environmental Management, Northern Office, Suite 450, 300 N. Michigan Street, South Bend, Indiana 46601.

Indiana Department of Environmental Management, Southwest Office, 1120 North Vincennes Avenue, P.O. Box 128, Petersburg, Indiana 47567-0128.

Indiana Department of Environmental Management, Southeast Office, 820 West Sweet Street, Brownstown, Indiana 47220-9557.

Legislative Services Agency, Indiana Government Center-North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana 46204.

The following air program rules are noticed for hearing and action:

Title 326 CFR Update. LSA #16-208.

The purpose of this hearing is to receive public comment prior to adoption of amendments to 326 IAC 1-1-3, concerning updates to References to the Code of Federal Regulations (CFR) to mean the July 1, 2015 edition. Upon completion, this rule shall be submitted to the United States Environmental Protection Agency (U.S. EPA) for approval into the Indiana State Implementation Plan. A copy of the most recently published version of this rule is available at: <http://www.in.gov/idem/5679.htm>.

For additional information concerning this rule contact Keelyn Walsh at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis at (317) 232-8229 or (800) 451-6027 (ext. 2-8229) (in Indiana), or kw Walsh@idem.in.gov.

Lawrenceburg Township, Dearborn County Emission Reporting. LSA #16-162.

The purpose of this hearing is to receive public comment prior to adoption of

amendments to 326 IAC 2-6 concerning reporting thresholds for the 8-hour ozone nonattainment area of Lawrenceburg Township in Dearborn County. This rule revision and the request to redesignate Lawrenceburg Township, Dearborn County to attainment for the 2008 8-hour ozone standard, will be submitted to U.S. EPA for approval into the Indiana State Implementation Plan. A copy of the most recently published version of this rule is available at: <http://www.in.gov/idem/5679.htm>.

For additional information concerning this rule contact Keelyn Walsh at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis at (317) 232-8229 or (800) 451-6027 (ext. 2-8229) (in Indiana), or kw Walsh@idem.in.gov.

Startup, Shutdown, and Malfunctions. LSA #15-326.

The purpose of this hearing is to receive public comment prior to preliminary adoption of amendments to 326 IAC 1-6 to address deficiencies identified by U.S. EPA in startup, shutdown, and malfunction provisions in state rules, and amendments to 326 IAC 2-9-1(h) to update a reference. This rule will be submitted to U.S. EPA as a revision to the Indiana State Implementation Plan required by the Clean Air Act. A copy of the most recently published version of this rule is available at: <http://www.in.gov/idem/5679.htm>.

For additional information concerning this rule contact Jack Harmon at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis at (317) 234-9535 or (800) 451-6027 (ext. 2-8229) (in Indiana), or jaharmon@idem.in.gov.

For these hearings, oral statements will be heard, but for the accuracy of the record, please submit statements in writing to the attendant designated to receive written comments at the public hearing.

A transcript of the hearings and all written submissions to the board at the public hearing shall be open to public inspection at the Indiana Department of Environmental Management; copies may be made available to any person upon payment of reproduction costs. Any person heard or represented at the hearings or requesting notice shall be given written notice of the actions of the board.

Christine Pedersen, Chief
Rules Development Section
Office of Legal Counsel

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, IN 46204

or call (317) 233-1785. Speech and hearing impaired callers may contact the agency via the

Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.



Indiana Department of Environmental Management

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Michael R. Pence
Governor

Carol S. Comer
Commissioner

June 27, 2016

CERTIFICATE OF PUBLICATION

This is to certify that the Indiana Department of Environmental Management (IDEM) Notice of Public Hearings for the Environmental Rules Board Meeting, 08/10/2016, regarding the following rulemaking actions:

- Final Adoption, Title 326 CFR Update, LSA #16-208
- Final Adoption, Lawrenceburg Township, Dearborn County Emission Reporting, LSA #16-162
- Preliminary Adoption, Startup, Shutdown, and Malfunctions, LSA #15-326

were published on IDEM's web site on or before July 6, 2016. It will remain posted on the site until at least August 10, 2016.

The notice in full may be found at the following web address, under the "Statewide" category.

<http://www.in.gov/idem/6777.htm>

Web publication of the notice was at the request of Christine Pedersen, Section Chief, Rule Development Section, Office of Legal Counsel, IDEM.

By:

Mike Finkelstein
IDEM Webmaster

Attachments:

Copy of web page as published.

File Edit View Favorites Tools Help

http://www.in.gov/indem/677.htm

IDEM: Public Notices: State...

http://www.anthemfacts http://www2.ido.state.in IDOA Conference Center ... Suggested Sites Web Slice Gallery

Page Safety Tools

MENU

IN.gov

BUSINESS & AGRICULTURE RESIDENTS GOVERNMENT EDUCATION TAXES & FINANCE VISITING & PLAYING FAMILY & HEALTH

Governor Mike Pence

Fact Sheets

Forms

Maps

Rules

Contact

Information About

Air Quality

Air Toxics Program

Blue-Green Algae

Community Environmental Health

Criminal Investigations

CTAP: Compliance and Technical Assistance Program

Enforcement

Environmental Education

Hoosier Riverwatch

Indiana Beach Program

Land Quality

Partners for Pollution Prevention

Pollution Prevention

Recycle Indiana

Storm Water Permitting

Waste Tire Program

Water Quality

Watersheds and Nonpoint Source

Water Pollution

Wetlands, Lakes and Streams

Regulation

The IN.gov News and Events Calendar provides information on public meetings that do not require public notice.

Subscriptions: Want to know about new notices as soon as they're posted? You can now subscribe to this regional public notice page. By subscribing to a region, you will be sent an e-mail or text message to your phone every time IDEM adds information to this regional page. This allows you to stay current on all posting and never miss a new posting. To subscribe, click on the subscription link in the left hand column.

Statewide

| Public Notices: Statewide | | | | |
|---|--|-------------------------|-----------------|------------------------------|
| Name or Facility | Type of Notice/Event | Publication Dates | Public Comment? | Additional Information |
| Environmental Rules Board Meeting 08/10/2016 | Legal Notice of Public Hearing [DOC] | 07/06/2016 - 08/10/2016 | No | |
| Public Participation for Indiana Coal Combustion Residuals Part 256 Solid Waste Management Plan Amendment | Notice of Public Comment Period and Public Hearing [DOC] | 04/13/2016 - 06/30/2016 | Yes | Project Manager: Jeff Sewell |
| Midwest Interstate Low-Level Radioactive Waste Compact Commission Annual Meeting | Notice of Public Meeting [DOC] | 06/06/2016 - 06/28/2016 | No | |

Monday, June 27, 2016

June, 2016

| | | | | | | |
|----|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 29 | 30 | 31 | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |

11:14:40 AM

Change date and time settings...

IDEM: Public Not...

Inbox - jplittman...

Air Certification o...

RE Posting of Leg...

11:14 AM 6/27/2016

Legal Notice of Public Hearing

Under 40 CFR 51.102, notice is hereby given that the Environmental Rules Board (board) will hold a public hearing at its regularly scheduled meeting on Wednesday, November 9, 2016, for the air program rule listed in this notice. The meeting will convene at 1:30 p.m. at the Indiana Government Center-South, Conference Center Room A, 10 North Senate Avenue, Indianapolis, Indiana. The purpose of the hearing is to receive public comments prior to board action. All interested persons are invited and will be given a reasonable opportunity to express their views concerning the proposed action.

Board documents may be viewed and downloaded from the Indiana Department of Environmental Management's Web site as early as one week prior to the meeting at <http://www.in.gov/idem/4696.htm>.

Copies of the proposed air program rules are also available to any person upon request, may be viewed online via the Internet from local libraries, and are available for public inspection at the following locations:

Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center-North, 100 North Senate Avenue, 13th Floor, Indianapolis, Indiana 46204.

Indiana Department of Environmental Management, Northwest Office, 330 West US Highway 30, Suite F, Valparaiso, IN 46385.

Indiana Department of Environmental Management, Northern Office, Suite 450, 300 N. Michigan Street, South Bend, Indiana 46601.

Indiana Department of Environmental Management, Southwest Office, 1120 North Vincennes Avenue, P.O. Box 128, Petersburg, Indiana 47567-0128.

Indiana Department of Environmental Management, Southeast Office, 820 West Sweet Street, Brownstown, Indiana 47220-9557.

Legislative Services Agency, Indiana Government Center-North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana 46204.

The following air program rule is noticed for hearing and action:

Startup, Shutdown, and Malfunctions. LSA #15-326.

The purpose of this hearing is to receive public comment prior to final adoption of amendments to 326 IAC 1-6 to address deficiencies identified by U.S. EPA in startup, shutdown, and malfunction provisions in state rules, and amendments to 326 IAC 2-9-1(h) to update a reference. This rule will be submitted to U.S. EPA as a revision to the Indiana State Implementation Plan required by the Clean Air Act. A copy of the most recently published version of this rule is available at: <http://www.in.gov/idem/5679.htm>.

For additional information concerning this rule contact Jack Harmon at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis at (317) 234-9535 or (800) 451-6027 (ext. 2-8229) (in Indiana), or jaharmon@idem.in.gov.

For these hearings, oral statements will be heard, but for the accuracy of the record,



Indiana Department of Environmental Management

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Michael R. Pence
Governor

Carol S. Comer
Commissioner

September 21, 2016

CERTIFICATE OF PUBLICATION

This is to certify that the Indiana Department of Environmental Management (IDEM) Notice of Public Hearings for the Environmental Rules Board Meeting, 11/09/2016, regarding the following rulemaking action:

- Final Adoption, Startup, Shutdown, and Malfunctions, LSA #15-326

was published on IDEM's web site on or before October 3, 2016. It will remain posted on the site until at least November 9, 2016.

The notice in full may be found at the following web address, under the "Statewide" category.

<http://www.in.gov/idem/6777.htm>

Web publication of the notice was at the request of Christine Pedersen, Section Chief, Rule Development Section, Office of Legal Counsel, IDEM.

By:

Mike Finkelstein
IDEM Webmaster

Attachments:

Copy of web page as published.

Fact Sheets
Forms
Maps
Rules
Contact

Information About

Air Quality
Air Toxics Program
Blue-Green Algae
Community Environmental Health
Criminal Investigations
CTAP: Compliance and Technical Assistance Program
Enforcement
Environmental Education
Hoosier Riverwatch
Indiana Beach Program
Land Quality
Partners for Pollution Prevention
Pollution Prevention
Recycle Indiana
Storm Water Permitting
Waste Tire Program
Water Quality
Watersheds and Nonpoint Source
Water Pollution
Wetlands, Lakes and Streams Regulation

The [IN.gov News and Events Calendar](#) provides information on public meetings that do not require public notice.

Subscriptions: Want to know about new notices as soon as they're posted? You can now subscribe to this regional public notice page. By subscribing to a region, you will be sent an e-mail or text message to your phone every time IDEM adds information to this regional page. This allows you to stay current on all posting and never miss a new posting. To subscribe, click on the subscription link in the left hand column.

Statewide

| Public Notices: Statewide | | | | |
|---|--|-------------------------|-----------------|------------------------------|
| Name or Facility | Type of Notice/Event | Publication Dates | Public Comment? | Additional Information |
| Environmental Rules Board Meeting 08/10/2016 | Legal Notice of Public Hearing [DOC] | 07/06/2016 - 08/10/2016 | No | |
| Public Participation for Indiana Coal Combustion Residuals Part 256 Solid Waste Management Plan Amendment | Notice of Public Comment Period and Public Hearing [DOC] | 04/13/2016 - 05/30/2016 | Yes | Project Manager: Jeff Sewell |
| Midwest Interstate Low-Level Radioactive Waste Compact Commission Annual Meeting | Notice of Public Meeting [DOC] | 05/06/2016 - 05/28/2016 | No | |

Monday, June 27, 2016

June 2016

| | | | | | | |
|----|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 29 | 30 | 31 | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |

11:14:40 AM

[Change date and time settings...](#)

Attachment F

BEFORE THE STATE OF INDIANA
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF AUGUST 10, 2016

ORIGINAL

PROCEEDINGS

before the Indiana Environmental Rules Board,
Beverly Gard, Chairman, taken before me, Lindy L.
Meyer, Jr., a Notary Public in and for the State
of Indiana, County of Shelby, at the Indiana
Government Center South, Conference Center,
Room 22, 402 West Washington Street,
Indianapolis, Indiana, on Wednesday, August 10,
2016 at 1:30 o'clock p.m.

- - -

William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel, Indiana 46032
(317) 848-0088

1 APPEARANCES:

2 BOARD MEMBERS:

3 Beverly Gard, Chairman
4 Gary Powdrill
5 Dr. Ted Niemiec
6 Joanne Alexandrovich
7 Kelly Carmichael
8 Ken Rulon
9 William Etzler
Chris Horn
Gail Boydston
Calvin Davidson
Devin Hillsdon-Smith, Proxy, Indiana Economic
Development Corporation
Carol S. Comer (nonvoting)

10 IDEM STAFF MEMBERS:

11 Bruno Pigott
12 Chris Pedersen
13 MaryAnn Stevens
14 Lauren Aguilar
15 Keelyn Walsh
16 Dan Watts
Peggy Dorsey
Jeff Sewell
Jack Harmon
Nancy King

17 PUBLIC SPEAKERS:

18 Bowden Quinn
19 Indra Frank
20 Tim Maloney
Bill Beranek

21 - - -

22

23

1 1:30 o'clock p.m.
2 August 10, 2016
3 - - -

3 CHAIRMAN GARD: Okay. Thank you.

4 The Chair sees a quorum, so we will call the
5 August 10th, 2016 meeting of the Environmental
6 Rules Board to order. I am going to have you go
7 around the room, we do this every time, because I
8 think sometimes there are probably new people in
9 the room who would like to know who we are and
10 who we represent.

11 (Mr. Rulon arrived.)

12 CHAIRMAN GARD: So, we'll start with
13 Bruno.

14 MR. PIGOTT: Bruno Pigott, Chief of
15 Staff, IDEM.

16 COMM. COMER: Carol Comer,
17 Commissioner, Indiana Department of Environmental
18 Management.

19 MR. HILLSDON-SMITH: Devin
20 Hillsdon-Smith, proxy for the Secretary of
21 Commerce and Economic Development.

22 MR. RULON: Ken Rulon, I represent
23 agriculture.

1 Opposed, nay.

2 (No response.)

3 CHAIRMAN GARD: The rule is
4 preliminarily adopted.

5 This is a public hearing before the
6 Environmental Rules Board of the State of Indiana
7 concerning preliminarily adoption of amendments
8 to rules at 326 IAC 1-6 and 2-9, the Startup,
9 Shutdown and Malfunction Rules.

10 I will now introduce Exhibit H, the draft
11 rules, into the record of the hearing.

12 Jack Harmon will present the rule.

13 MR. HARMON: Good afternoon,
14 Chairwoman Gard, members of the Board. I'm Jack
15 Harmon, with the Office of Legal Counsel, with
16 the Rules Development Branch, and today I am
17 going to present information on Rule No. 15-326,
18 on the Startup, Shutdown and Malfunction, or SSM
19 Rule for your consideration.

20 Before you today are amendments to
21 Indiana's SSM Rules at 326 IAC 1-6 for your
22 consideration for preliminary adoption. The SSM
23 Rules describe for -- how owners and operators of

1 industrial processes treat excessive emissions
2 from their processes during periods of startup,
3 during periods of shutdown and during periods of
4 malfunction.

5 When an industrial process goes through
6 periods of startup or shutdown or malfunctions,
7 excessive emissions may occur because processes
8 and/or control devices are not warmed up yet, or
9 they're in the process of shutting down, or
10 because of a sudden malfunction that suddenly
11 interrupted the process and abruptly halted
12 control devices. Currently, Indiana Rules at 326
13 IAC 1-6-4(a) provide that an exemption for
14 noncompliance with emission limitations could be
15 allowed during certain SSM events.

16 On June 12th, 2015, U.S. EPA published its
17 findings in the Federal Register, 80 Federal
18 Register 33839, taking actions against 36 states,
19 including Indiana, concerning inadequacies to
20 startup, shutdown and malfunction provisions
21 within the state rules. The SIP Call instructed
22 states, including Indiana, to correct specific
23 instructions and provisions in the State

1 Implementation Plans, or SIP's, concerning the
2 treatment of these excess emissions to be
3 consistent with the Clean Air Act.

4 Section 302(k) of the Clean Air Act
5 requires SIP's to contain emission limitations
6 that limit the quantity, the rate, or the
7 concentration of emissions of air pollutants on a
8 continuous basis without any regard to periods of
9 startup, shutdown or malfunctions. The SIP Call
10 required Indiana to submit a revision correcting
11 its inadequate SSM provisions at 326 IAC 1-6 for
12 approval into the SIP by EPA by November 22nd,
13 2016.

14 Following our first comment period for
15 this rulemaking, IDEM responded to several
16 comments when it published its draft rule and its
17 second notice of public comment period.
18 Following the second comment period, IDEM
19 received no public comments.

20 IDEM has been in communication with U.S.
21 EPA regarding this rulemaking action, and EPA is
22 satisfied that the revision will allow Indiana to
23 be in full compliance with the Clean Air Act with

1 regard to SSM provisions.

2 The rule at 326 IAC 1-6-4(a) has been
3 amended per the SIP Call to remove language that
4 exempted when an SSM would be considered as a
5 violation. The rule now requires compliance at
6 all times with all emissions standards and
7 limitations, and makes no distinction between
8 periods of regular operations during periods of
9 SSM -- versus periods of SSM.

10 The rule at 326 IAC 2-9-1(h) has also been
11 changed, just because it references this rule in
12 its requirements, and, therefore, had to be
13 updated to correspond to the changes at
14 326 IAC 1-6. Other areas of the rule have been
15 changed to update minor standard language and
16 style changes.

17 The amendments to 326 IAC 1-6 and
18 326 IAC 2-9 before you will ensure that IDEM
19 complies with the federal Clean Air Act
20 requirements, and will enable EPA to approve
21 Indiana's SIP revision. Having an approved
22 program benefits the regulated community, because
23 they're not subject to both federal and state

1 rules. Complying with the federal requirements
2 is also important so that IDEM continues to
3 receive federal funding, which is provided to
4 states, such as Indiana, that have approved
5 programs.

6 The Department respectfully requests today
7 that the Board preliminarily adopt this rule as
8 presented, and IDEM technical staff, program
9 staff, is here and available should you have any
10 questions.

11 Thank you.

12 CHAIRMAN GARD: Are there any
13 questions for Mr. Harmon?

14 MS. ALEXANDROVICH: Yes.

15 A couple of comments. In the rule
16 information sheet, affected -- under affected
17 persons, I believe it requires to obtain a permit
18 under 326 IAC 2-5.1 and 2-6.1. And you also left
19 out on the overview the changes to 2-9-1.

20 But my question is why that is struck out
21 of (h). I know -- because what you've changed is
22 saying basically you're not off the hook if you
23 have a malfunction, you know, for a violation,

1 but the sentence that was struck, "If an
2 exceedence is the result of a malfunction, then
3 the provisions of 326 IAC 1-6 apply," which is
4 regarding malfunctions and how to report them to
5 the agency and then make corrections for them.

6 So, I'm not really -- so, I would be
7 concerned that EPA would kind of look a little
8 funny at that being struck.

9 MR. HARMON: Specifically what
10 language are you looking at?

11 MS. ALEXANDROVICH: I'm under 2-9(h).

12 MR. HARMON: 2-9-1?

13 MS. ALEXANDROVICH: Page 6, 2-9-1.

14 MR. HARMON: On page?

15 MS. BOYDSTON: 6.

16 DR. ALEXANDROVICH: 6 of 7.

17 COMM. COMER: Yeah.

18 MR. HARMON: 6 of 7?

19 MS. ALEXANDROVICH: Yeah.

20 MR. HARMON: And the comment is what,
21 ma'am?

22 MS. ALEXANDROVICH: Why that sentence
23 is struck.

1 MR. HARMON: "If an exceedence is the
2 result of a malfunction," that one?

3 MS. ALEXANDROVICH: (Nodded yes.)

4 MR. HARMON: Well, 2-9-1 is a
5 completely separate rule and it's for specific --
6 specific source operating agreements, SSOA's, in
7 2-9, and -- but in there, the rule currently says
8 that if an SSOA has an exceedence that's the
9 result of a malfunction, then the provisions of
10 1-6 apply.

11 And we had to change that because we
12 changed 1-6, which basic -- well, 1-6 says it
13 doesn't matter whether you have a malfunction or
14 what, you have -- you're required to comply with
15 your emission limitations at all times; okay?
16 This was changed because there was a reference to
17 1-6. Did I answer your question of what the
18 understanding is?

19 DR. ALEXANDROVICH: Well, yeah. I --
20 yeah. I just -- I'm not sure, because really,
21 the way I see it, I mean you've essentially, by
22 striking the stuff out of 1-6-4 --

23 MR. HARMON: Okay.

1 MS. ALEXANDROVICH: -- you're making
2 that rule more stringent, so then -- so this is
3 taking out all -- and the rest of 1-6 goes to
4 reporting on malfunctions and stuff like that.
5 So, you're taking out the reporting stuff. So,
6 I'm just -- if EPA is okay with it, I guess I am,
7 but I'm just still a little confused.

8 MR. HARMON: Okay.

9 CHAIRMAN GARD: Yes.

10 MR. HILLSDON-SMITH: So, looking at
11 this from an economic development, industrial
12 development perspective in particular, these
13 facilities will be treated the same for excess
14 emissions across all states; right, because it's
15 U.S. EPA that's telling -- as far as our
16 competitiveness is concerned --

17 MR. HARMON: That's correct.

18 MR. HILLSDON-SMITH: -- it's a level
19 playing field?

20 MR. HARMON: That's correct.

21 MR. HILLSDON-SMITH: Some states may
22 have more requirements, but we're doing what the
23 U.S. EPA is telling us?

1 MR. HARMON: Our original SIP was
2 approved by EPA --

3 MR. HILLSDON-SMITH: Right.

4 MR. HARMON: -- and then there was
5 some litigation, and EPA actually changed its
6 stance in 2015 and said, "Okay. Yeah, you're
7 right. We were allowing -- when we approved
8 these SIP's, we were allowing for violations of
9 the Clean Air Act." So, EPA changed their stance
10 and went through all of the language of all 50
11 states, found 36 of them to be deficient --

12 MR. HILLSDON-SMITH: Okay.

13 MR. HARMON: -- in the provisions
14 for -- related to the Clean Air Act, and issued
15 SIP Calls at that point. So, Indiana is
16 responding specifically to that SIP Call.

17 MR. HILLSDON-SMITH: Yeah. I haven't
18 received any comments or questions from industry.
19 I just want to make sure I -- thank you.

20 MR. HARMON: Uh-huh.

21 CHAIRMAN GARD: Any other questions?
22 Gary.

23 MR. POWDRILL: I'd like to comment,

1 first of all, that we made a quantum leap of two
2 centuries when we struck the word "telegraph" and
3 inserted --

4 (Laughter.)

5 MR. POWDRILL: -- and inserted "other
6 electronic means." And in that same sentence,
7 you talk about the time -- the time in which you
8 must report, and it is "...no...later than
9 four...business hours, daylight -- daytime
10 business hours after the beginning of the
11 occurrence." But it's moot on what the rule is
12 if the occurrence happens on a nonbusiness day.
13 So, should there be something in there that says,
14 "first business day within so many hours of the
15 first -- beginning of the first business day
16 after the event," or what?

17 MR. HILLSDON-SMITH: Just default to
18 noon on Monday, I guess.

19 MR. POWDRILL: I don't know. That's
20 why I asked.

21 MR. HILLSDON-SMITH: Yeah.

22 MR. HARMON: Okay. I made a note of
23 that, and it's something we'll have to discuss.

1 You know, I mean we're asking for a preliminary
2 adoption, so certainly --

3 MR. POWDRILL: This is preliminary.

4 MR. HARMON: -- there could be
5 revisions between now and the final adoption.
6 But certainly we respect your comments. That's a
7 good question.

8 MR. CARMICHAEL: Do you have any
9 sense of how often this has been used in the
10 past?

11 MR. HARMON: Actually, we do. We
12 looked at the impact of that, and there have
13 been -- in the last five years there's been one
14 report turned in, in five years. This rule
15 actually applies -- 1-6 actually applies to a
16 very small population within the state. It's a
17 small group of sources that actually this applies
18 to; okay?

19 We have the Title V and the FESOP program
20 that have a lot more sources, a lot of different
21 sources. They've got their own set of rules.
22 This particular rule, 1-6, applies to the very
23 small sources, and program tells us that within

1 the last five years there's been one -- one
2 occurrence of a malfunction report turned in.

3 MR. CARMICHAEL: And is that in
4 looking at removing emergency provisions from
5 Title V as well?

6 MR. HARMON: At this point in time,
7 we're not planning on any other rule except for
8 this right now. I don't know what the future
9 would bring; okay?

10 MR. CARMICHAEL: Do you know what the
11 derivation of EPA's change was that drove this?
12 Was it a court case?

13 MS. ALEXANDROVICH: Here.

14 MR. HARMON: Yeah, it was litigation.
15 I'm not exactly sure of the exact citation, but
16 it --

17 MS. ALEXANDROVICH: It's in that.

18 MR. HARMON: It's in the framework of
19 the rule, so --

20 MR. POWDRILL: The industrial
21 facilities that are included in this rule don't
22 necessarily have to generate electricity;
23 correct?

1 MR. HARMON: That's correct.

2 MR. POWDRILL: They can be just
3 boilers for heat treatment? Okay.

4 CHAIRMAN GARD: Any other questions?

5 (No response.)

6 CHAIRMAN GARD: Okay. I have no
7 speaker cards. Is there anybody that wants to
8 speak on this from the audience?

9 (No response.)

10 CHAIRMAN GARD: Seeing none, this
11 hearing is concluded.

12 MR. HARMON: Thank you.

13 CHAIRMAN GARD: The Board will now
14 consider preliminary adoption of amendments to
15 326 IAC 1-6 and 2-9, the Startup, Shutdown and
16 Malfunction Rules. Any further Board discussion?

17 (No response.)

18 CHAIRMAN GARD: Is there a motion to
19 preliminarily adopt the rules?

20 MR. HILLSDON-SMITH: So moved.

21 MR. DAVIDSON: Second.

22 CHAIRMAN GARD: All in favor, say
23 aye.

1 MR. HORN: Aye.

2 DR. NIEMIEC: Aye.

3 DR. ALEXANDROVICH: Aye.

4 MS. BOYDSTON: Aye.

5 MR. POWDRILL: Aye.

6 MR. CARMICHAEL: Aye.

7 MR. RULON: Aye.

8 MR. ETZLER: Aye.

9 MR. DAVIDSON: Aye.

10 MR. HILLSDON-SMITH: Aye.

11 CHAIRMAN GARD: Aye.

12 Opposed, nay.

13 (No response.)

14 CHAIRMAN GARD: The rules are
15 preliminarily adopted.

16 This is a public hearing before the
17 Environmental Rules Board of the State of Indiana
18 concerning preliminary adoption of amendments to
19 rules at 327 IAC 5-7-11, the Definition of
20 "Interference."

21 I will now introduce Exhibit I, the draft
22 rules, into the record of the hearing.

23 MaryAnn Stevens will present the rule.

1 be on the IDEM Web site and be submitted to
2 appropriate people in the General Assembly and
3 available for public consumption.

4 So, does anybody that was on the Committee
5 want to make any comments about it at all?

6 (No response.)

7 CHAIRMAN GARD: Well, thank you all
8 very much for participating.

9 Let's see. What's next? This is Open
10 Forum. Is there anybody in the audience that
11 wanted to address the Board today?

12 (No response.)

13 CHAIRMAN GARD: Seeing none, the next
14 meeting of the Environmental Rules Board is set
15 for, tentatively, November 9th at 1:30 in
16 Conference Room A. They're moving us around.
17 That's the day after election, which may not
18 be -- everyone may not be totally awake by then,
19 but anyway, that's tentatively the next meeting.

20 Is there anything else to come before the
21 Board?

22 (No response.)

23 CHAIRMAN GARD: If not, is there a

1 motion to adjourn?

2 DR. NIEMIEC: So moved.

3 CHAIRMAN GARD: Is there a second?

4 MR. HILLSDON-SMITH: Second.

5 CHAIRMAN GARD: All in favor, say
6 aye.

7 MR. HORN: Aye.

8 DR. NIEMIEC: Aye.

9 DR. ALEXANDROVICH: Aye.

10 MS. BOYDSTON: Aye.

11 MR. POWDRILL: Aye.

12 MR. CARMICHAEL: Aye.

13 MR. RULON: Aye.

14 MR. ETZLER: Aye.

15 MR. DAVIDSON: Aye.

16 MR. HILLSDON-SMITH: Aye.

17 CHAIRMAN GARD: Aye.

18 Opposed, nay.

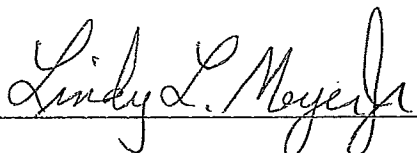
19 (No response.)

20 CHAIRMAN GARD: We are adjourned.

21 - - -
22 Thereupon, the proceedings of
23 August 10, 2016 were concluded
at 3:14 o'clock p.m.
- - -

1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Wednesday, August 10, 2016 in this matter and
8 transcribed by me.

9
10 

11 Lindy L. Meyer, Jr.,

12 Notary Public in and

13 for the State of Indiana.

14
15 My Commission expires October 27, 2016.
16
17
18
19
20
21
22
23

Attachment G

TITLE 326 AIR POLLUTION CONTROL DIVISION

Proposed Rule
LSA Document #15-326

DIGEST

Amends 326 IAC 1-6-1, 326 IAC 1-6-2, 326 IAC 1-6-4, 326 IAC 1-6-5, 326 IAC 1-6-6, and 326 IAC 2-9-1 concerning startup, shutdown, and malfunction (SSM) emissions. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: September 30, 2015, Indiana Register (DIN: 20150930-IR-326150326FNA).
Second Notice of Comment Period: March 30, 2016, Indiana Register (DIN: 20160330-IR-326150326SNA).
Notice of First Hearing: March 30, 2016, Indiana Register (DIN: 20160330-IR-326150326PHA).
Date of First Hearing: August 10, 2016.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on March 30, 2016, at DIN: 20160330-IR-326150326SNA, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from March 30, 2016, through April 29, 2016, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 10, 2016, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 1-6. No comments were made at the first hearing.

326 IAC 1-6-1; 326 IAC 1-6-2; 326 IAC 1-6-4; 326 IAC 1-6-5; 326 IAC 1-6-6; 326 IAC 2-9-1

SECTION 1. 326 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to the owner or operator of any facility **source** required to obtain a permit under 326 IAC 2-5.1 or 326 IAC 2-6.1.

(Air Pollution Control Division; 326 IAC 1-6-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; filed May 25, 1994, 11:00 a.m.: 17 IR 2238; filed Nov 25, 1998, 12:13 p.m.: 22 IR 980)

SECTION 2. 326 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-2 Records; notice of malfunction

Authority: IC 13-14-8-2; IC 13-17-3-4

Affected: IC 13-15; IC 13-17

Sec. 2. (a) **The owner or operator must keep** a record ~~shall be kept~~ of all malfunctions, including startups, or shutdowns of any facility **emission unit** or emission control equipment ~~which result that results~~ in violations of:

- (1) applicable air pollution control regulations; or
- (2) applicable emission limitations. ~~and such~~

(b) ~~The records shall~~ **must** be retained for a period of three (3) years and ~~shall~~ be made available to the commissioner upon request.

(c) When a malfunction of any ~~facility~~ **emission unit** or emission control equipment occurs ~~which that~~ lasts more than one (1) hour, ~~said the condition shall must~~ be reported to the commissioner or ~~his the~~ **commissioner's** appointed representative as follows:

- (1) Notification ~~shall must~~ be made by telephone or telegraph, **other electronic means** as soon as practicable, but in no event later than four (4) daytime business hours after the beginning of ~~said the~~ occurrence.
- (2) Failure to report a malfunction of any **emission unit** or emission control equipment subject to the requirements of this rule (~~326 IAC 1-6~~) shall constitute a violation of this rule (~~326 IAC 1-6~~) and any other applicable rules.
- (3) Information ~~ef~~ on the scope and expected duration of the malfunction ~~shall must~~ be provided including the following:
 - (1) (A) Identification of the specific emission control device to be taken out of service, ~~as well as and~~ the location and permit number of ~~such the~~ equipment.
 - (2) (B) The expected length of time that the emission control equipment will be out of service.
 - (3) (C) The nature and quantity of emissions of air contaminants likely to occur during the shutdown period.
 - (4) (D) Any measures ~~such as the use of off-shift labor on equipment~~ that will be utilized **used** to minimize the length of the shutdown period, **such as the use of off-shift labor on equipment**.
 - (5) Any reasons ~~that shutdown of the facility operation during the maintenance period would be impossible for the following reason:~~
 - (A) continued operation is required to provide essential services, provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be sufficient reason;
 - (B) continued operation is necessary to prevent injury to persons or severe damage to equipment.
 - (6) (E) A demonstration that interim control measures have reduced or will reduce emissions from the **facility emission unit** during the shutdown period.

(Air Pollution Control Division; 326 IAC 1-6-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; errata, 11 IR 2632)

SECTION 3. 326 IAC 1-6-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-4 Operating conditions

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 4. (a) ~~Facility~~ **Source** owners or operators shall ~~be responsible for operating~~ **operate** and maintaining **maintain** all emission control equipment and combustion or process equipment or processes in compliance with all applicable rules. ~~Emissions temporarily exceeding the standards which are due to malfunctions of facilities or emission control equipment shall not be considered a violation of the rules provided the source demonstrates that:~~

- (1) ~~All reasonable measures were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the allowable limits, including the use of off-shift and over-time labor, if necessary.~~
- (2) ~~All possible steps were taken to minimize the impact of the excessive emissions on ambient air quality which may include but not be limited to curtailment of operation and/or shutdown of the facility.~~
- (3) ~~Malfunctions have not exceeded five percent (5%), as a guideline, of the normal operational time of the facility.~~
- (4) ~~The malfunction is not due to the negligence of the operator.~~

(b) ~~No facility shall~~ **An emission unit must not** be operated unless ~~the any required~~ air pollution control **device or devices** and measures are also in operation simultaneously and are not bypassed. ~~unless necessary to prevent damage to equipment or injury to persons or unless there is a malfunction and the requirements set forth in subsection (a) of this section are met:~~

(c) Excessive emissions shall ~~must~~ be brought into compliance with all practicable speed, and appropriate ~~action, including those set forth above,~~ **actions must be taken to:**

- (1) correct the conditions causing ~~such the~~ emissions to exceed applicable limits; ~~to~~
- (2) reduce the frequency of occurrence of ~~such the~~ conditions; ~~to~~
- (3) minimize the amount by which ~~said the~~ limits are exceeded; and ~~to~~
- (4) reduce the length of time for which ~~said the~~ limits are exceeded.

These actions ~~shall must~~ be initiated as expeditiously as practicable.

(Air Pollution Control Division; 326 IAC 1-6-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)

SECTION 4. 326 IAC 1-6-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-5 Excessive malfunctions; department actions

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 5. The commissioner may consider the following guidance in determining cases of excessive malfunctions: where

- (1) If records show that repeated malfunctions exceed five percent (5%) ~~as a guideline~~, of the normal operational time for any one (1) control device or combustion or process equipment, the commissioner may require that the maintenance program be improved or that the defective or faulty equipment or emission control device be replaced.
- (2) The commissioner may require curtailment of operation of ~~a facility~~ **an emission unit** if the owner or operator of the ~~facility or emission unit~~ and emission control device cannot demonstrate that for the most recent twelve (12) month period the ~~facility and/or emission unit~~ and the emission control device ~~has have~~ operated in compliance with the applicable rules at least ninety-five percent (95%) of the operating time of said ~~the~~ equipment.

(Air Pollution Control Division; 326 IAC 1-6-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)

SECTION 5. 326 IAC 1-6-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-6-6 Malfunction emission reduction program

Authority: IC 13-14-8; IC 13-17-3

Affected: IC 13-15; IC 13-17

Sec. 6. (a) Any owner or operator of a ~~facility which has the potential to emit concentration in excess of the concentrations stated in 326 IAC 1-6-1~~ **an emission unit that is required to obtain a permit under section 1 of this rule** shall submit by January 19, 1980, or a **malfunction emission reduction program** within one hundred eighty (180) days after a new ~~source~~ **emission unit** commences operation. ~~a malfunction emission reduction program. Said~~

(b) The program shall ~~must~~ include: ~~but not be limited to~~

- (1) the normal operating emission rate; and
- (2) the ~~program proposed~~ **actions that will be taken** to reduce emissions in the event of a malfunction to an emission rate ~~which that~~ will not contribute to the cause of the violation of the ambient air quality standards established in 326 IAC 1-3.

(c) The program shall ~~must~~ be based on the:

- (1) best estimates of type and number of startups, shutdowns, and malfunctions experienced during normal operation of the ~~facility~~ **emission unit** or emission control device; and the
- (2) scope and duration of ~~such~~ **the** conditions. ~~Said~~

(d) The program ~~may be~~ **is** subject to review and approval by the commissioner.

(Air Pollution Control Division; 326 IAC 1-6-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2382)

SECTION 6. 326 IAC 2-9-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-9-1 General provisions

Authority: IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-11-2; IC 13-14-8

Sec. 1. (a) The definitions in IC 13-11-2, 326 IAC 1-2, 326 IAC 2-7, and 326 IAC 2-8 apply throughout this rule.

(b) A source may limit its potential to emit by complying with the specific restrictions and conditions listed in this rule. A source electing to comply with this rule shall apply to the commissioner for a source specific operating agreement. A source issued a source specific operating agreement under this rule is not subject to 326 IAC 2-6.1 unless otherwise required by state, federal, or local law. A source issued a source specific operating agreement pursuant to this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the source specific operating agreement limits the source's potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7. Until the commissioner has issued an operating agreement for a source that would otherwise be subject to 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8, the source is subject to all applicable requirements of those rules. A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

(c) The owner or operator of a source seeking an operating agreement ~~shall~~ **must** submit a request to the commissioner. The request ~~shall~~ **must** include all information necessary for the commissioner to verify that the source meets the applicable restrictions and conditions specified in this rule, including the following:

(1) Identifying information.

(2) A description of the following:

(A) The source's:

(i) nature;

(ii) location;

(iii) design capacity; and

(iv) typical operating schedule.

(B) The nature and amount of regulated pollutants emitted in the prior twelve (12) months.

(C) How the source will comply with the applicable restrictions and conditions specified in this rule.

(3) Certification by a responsible official that the source shall comply with all applicable conditions of this rule.

The request ~~shall~~ **must** be signed by a responsible official who ~~shall certify~~ **certifies** that the information contained therein is accurate, true, and complete. Any applicable fees specified in this rule ~~shall~~ **must** be submitted with the request.

(d) If the commissioner determines that the source meets the applicable restrictions and conditions specified in any applicable section of this rule, the commissioner shall issue the operating agreement. The operating agreement ~~shall~~ **must**:

(1) specify the source specific restrictions and conditions applicable to the source; and

(2) establish specific monitoring and reporting requirements.

Any source for which the commissioner has issued a source specific operating agreement shall provide annual notice to the commissioner stating that the source is in operation and certifying that its operations are in compliance with applicable sections as specified in the operating agreement. This notice ~~shall~~ **must** be submitted no later than January 30 of each year.

(e) Before a source subject to this section modifies its operations in such a way that it will no longer comply with the applicable restrictions and conditions of its source specific operating agreement, it shall obtain the appropriate approval from the commissioner under the following:

(1) 326 IAC 2-2.

(2) 326 IAC 2-3.

(3) 326 IAC 2-4.1.

(4) 326 IAC 2-5.1.

(5) 326 IAC 2-6.1.

(6) 326 IAC 2-7.

(7) 326 IAC 2-8.

(f) Any records required to be kept by a source in accordance with any section of this rule ~~shall~~ **must** be:

(1) maintained at the site for at least five (5) years; and

(2) made available for inspection by the department upon request.

(g) A source may apply for up to four (4) different types of source specific operating agreements contained in this rule provided allowable emissions or potential to emit for any regulated air pollutant, as limited under the source specific operating agreements, do not exceed major source levels when aggregated. A source may

combine up to four (4) types of source specific operating agreements in one (1) application. Upon billing, the applicant shall pay the applicable fee in accordance with 326 IAC 2-1.1-7(g).

(h) Any source subject to this rule shall report to the department, in writing, any exceedance of a requirement contained in this rule or its operating agreement within one (1) week of its occurrence. The exceedance report shall **must** include information on the actions taken to correct the exceedance, including measures to reduce emissions, in order to comply with the established limits. ~~If an exceedance is the result of a malfunction, then the provisions of 326 IAC 1-6 apply.~~

(i) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided.

(j) Revocation of the operating agreement and a source becoming subject to the applicable requirements of a major source may result from noncompliance with any:

- (1) applicable provision of this rule; or
- (2) requirement contained in a source's operating agreement.

(Air Pollution Control Division; 326 IAC 2-9-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2280; filed Apr 1, 1996, 9:00 a.m.: 19 IR 1757; filed May 7, 1997, 4:00 p.m.: 20 IR 2303; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1059; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108; readopted filed Oct 22, 2004, 10:35 a.m.: 28 IR 801; filed Sep 28, 2011, 10:56 a.m.: 20111026-IR-326070286FRA)

Notice of Public Hearing

Posted: 08/31/2016 by Legislative Services Agency
An html version of this document.

TITLE 326 AIR POLLUTION CONTROL DIVISION

Notice of Public Hearing
LSA Document #15-326

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on November 9, 2016, at 1:30 p.m., at the Indiana Government Center South, 302 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Environmental Rules Board will hold a public hearing on amendments to 326 IAC 1-6 and 326 IAC 2-9-1 concerning the Startup, Shutdown, and Malfunction (SSM) rule, in response to a United States Environmental Protection Agency (U.S. EPA) State Implementation Plan (SIP) Call.

The purpose of this hearing is to receive comments from the public prior to consideration of final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Jack Harmon, Rules Development Branch, Office of Legal Counsel, (317) 234-9535 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

or call (317) 233-1785 (V). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service (711) or (800) 743-3333. Please provide a minimum of 72 hours notification.

Copies of these rules are now on file at the Rules Development Branch, Office of Legal Counsel, Indiana Department of Environmental Management, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor and Legislative Services Agency, Indiana Government Center North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana and are open for public inspection.

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

Posted: 08/31/2016 by Legislative Services Agency
An [html](#) version of this document.

Attachment H

LSA Document # 15-326

Transcript of Second Public Hearing (Attachment H)
to be submitted with the Final Rule